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Rx News Bulletin

Bureau of Narcotics & Dangerous Drugs

Missouri Department of Health and Senior Services

health.mo.gov/safety/bndd/index.php

BNDD SENDING OUT EXPIRATION NOTICES BY E-MAIL ONLY

Starting in September 2017, the BNDD will no longer be mailing printed postcards to registrants to notify them of upcoming expiration dates and reminders to re-apply. Since all registrants are to provide an email address on the application, the BNDD will now send out emails to registrants 60 days in advance of their expiration date. Registrants are asked to make sure they provide a current and valid email address to receive these notices.

Medication Contracts—A Great Idea!!

The relationship between practitioner and patient is supposed to be based upon full information and open and honest communication. Unfortunately, practitioners often are besieged with drug-seeking patients who will go to great lengths to obtain additional drugs, prescriptions and refills. Obtaining or attempting to obtain controlled substances by fraud is a felony covered in Section 579.045, RSMo.

You Must Ask and Document Questions

The violation occurs when a person lies, misrepresents, uses deceit, fraud, or fails to disclose material information to his practitioner when receiving a controlled substance. The statute is violated when the patient lies or displays some type of dishonesty. To protect the integrity of drug supplies, it is imperative that medical staff ask questions. If you don't questions, then drug-seekers will come to your door. Be sure to ask and document information such as:

- What medications have you received for this?
- What medications are you on now?
- When was your last prescription for this?
- What other doctors have treated you for this?
- How many other practitioners are you seeing and for what?
- What medications have they provided to you?

Medication Contracts

These come under a variety of names and most practitioners draft their own for their patients. Some call them medication contracts, or patient contracts or treatment contracts or even pain-management contracts. The basic principles are the same. The practitioners protect themselves and also inform the patient regarding what is expected and what is not acceptable regarding how medications are handled. Regulatory agencies have always been in favor of these documents because it protects the medical community and deters drug seekers. Examples of some terms include, but are not limited, to:

- Patient shall not receive any medications from any other medical provider without notifying me within 24 hours.
- Patient shall report to me within 24 hours of visiting any emergency room.
- Patient agrees that I am their primary practitioner and my treatment shall be reported to any other medical practitioners providing treatment to them.
- Patients shall not obtain similar prescriptions for similar drug products from other practitioners.

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- Patient agrees that I am their primary practitioner and my treatment shall be reported to any other medical practitioners providing treatment to them.
- Patients shall not obtain similar prescriptions for similar drug products from other practitioners.
- Patients shall take medications as directed and not take increased amounts so that refills are required sooner than authorized.
- Prescriptions will not be automatically replaced when it is reported drugs were stolen, lost, or eaten by the family pet.
- Patients shall not transfer or share their prescribed medicines with other persons.
- Patients shall not consume the prescriptions of another person.
- Patients shall use one pharmacy and shall **NOT** have multiple prescriptions filled from multiple doctors at multiple pharmacies.
- Patients shall not merely rely on prescriptions but must also cooperate with treatment by attending appointments and other treatment modalities and tests as scheduled.
- Patient is fully aware that lying, making false statements or representations to the medical staff or withholding material information regarding controlled substances can be a felony violation of Section 579.045, RSMo.
- Patient understands that violation of this contract is grounds for termination of care.
- Patient understands that making false statements and misrepresentations to this medical staff may result in reports being made to law enforcement. Fraudulent acts are not covered by HIPAA and are not confidential.
- Both the patient and a member of the medical staff should sign and date the agreement or contract.
- It should be retained in the patient's file.

It Has Been Proven to Work:
The BNDD investigated a complaint regarding prescribing habits. The investigation found that the patient had visited 22 different doctors and obtained 76 prescriptions in 51 weeks at eight different pharmacies. The patient had 3 separate pain contracts promising 3 different physicians that they were his only doctor. The doctors were protected and the patient was charged with fraud.

A Patient Chart is Always Required

A patient chart is always required. The chart should contain patient history, dates seen, progress notes, treatment plans, and medications. Each profession has requirements specific to its practice act regarding what must be documented. All controlled substance activities must always be documented in a patient's chart. This would be prescriptions, administration and dispensing. Documentation of a patient chart is paramount in establishing a legitimate practitioner/patient relationship. The DEA has ruled that if controlled substances are authorized when there is no patient chart and no physical examination, this would not be a legal distribution of controlled substances.

Federal Regulation 21 CFR 1306.04(a) states in material part:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

A Patient Chart is Always Required
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The DEA has ruled there must legitimate treatment which includes physical examinations and records. Other licensing boards have similar requirements for patient charts.

- State Board of Healing Arts…….. Section 334.097.1, RSMo
- Missouri Dental Board…….. Section 332.052, RSMo
- Missouri Veterinary Board…….. Section 340.284, RSMo

Check It Out

You can find educational documents on the BNDD website at http://health.mo.gov/safety/bndd/publications.php. Documents such as the "CDC Opiate Prescribing Guidelines" and also "Preventing Prescription Fraud" can be viewed.

What do drug seekers look for when talking to practitioners?

Drug seekers are aware that the actual fraud and crime occurs when they lie or make a false representation to a ractitioner. These types of people seek out practitioners who do not ask a lot of questions so the patients do not have to make many false statements. These patients look for the easiest access they can find. Based upon previous cases in speaking with these patients, here is what they have in common:

1. Their doctor simply just gave them what they wanted and their doctor never took the time to question them or disagree with them. The patients wanted a doctor who was too busy to argue.
2. There isn't much writing in their charts. The doctor and staff don't document their prescriptions so it is easy for patients to call in asking for a lot of refills. The staff does not know if refills are timely.
3. No one questions why the patient traveled tremendous distances to get prescriptions and then get themfilled.
4. They tell the doctors, "You are the only person who will see me." or "No one else can or will treat me." They try to get the doctor to feel that they are their last hope of medical care.
5. They will seek out general practice and family doctors in smaller communities and try to get them to treat their severe and chronic pain issues. They said they can sometimes get more and stronger prescriptions from a general practice rather than going to a specialist in pain management.
6. They listen to their friends and learn who the best doctors are to see to get the prescriptions you want. This information is shared and passed around the community.
7. They seek out emergency rooms where doctors are busy and will give them a prescription for more than an emergency supply, but possibly a prescription for 30 days with refills.

What Constitutes a Legal Prescription?

What makes a prescription legal is addressed by state and federal regulatory agencies and also the criminal statutes. There is also case law identifying acceptable practice. Below the bureau will address the basic requirements.

Initial Basic Requirements for All Prescribers: 21 CFR 1306.05(a) and 195.060.1, RSMo

- The prescriber must have a current and valid professional license, a Missouri BNDD registration and also a federal DEA registration.
- The prescription must be documented and written as required by state and federal law, with all the components of the patient's name and address, date issue, prescriber's name and address, DEA number, drug name, strength, form, and quantity, directions for administering, refill authorization and whether substitutions may be permitted. The prescriber has the primary responsibility for issuing a completed prescription.
- The prescription must be for treatment that is within the prescriber's legal scope of practice.
- There must be a legitimate practitioner/patient relationship established.

What Leads to Criminal Acts?

The federal government has ruled that the definition of a "prescription" includes the elements that it has been issued for a legitimate medical purpose in the usual scope of professional practice. Therefore if a prescription is not for an established legitimate medical purpose or is outside the scope of professional practice, this would not rise to the level of being a "prescription" and it would be considered illegal drug distribution.

In reviewing the case United States v. Rosen, 582 F2d 1032 (5th Cir. 1978), the Fifth Circuit United States Court of Appeals summarized cases in which prescribers had been found to have violated the law by issuing prescriptions that were not legal. The court listed the following recurring patterns indicative of diversion and drug abuse:

- The practitioner issued an inordinately large quantity of prescriptions.
- Inordinately large quantities of controlled drug doses were dispensed.
- No physical examination was given by the prescriber or other licensed practitioner under them.
- The prescribers warned and instructed the patient on how to use different pharmacies to avoid detection or suspicion in prescription monitoring programs.
- The prescriber issued the prescriptions knowing the patient was not going to personally use them, but the drugs would be delivered to another person.
- There was no logical relationship between the drugs prescribed and the treatment for the conditions documented in the patient's chart.
- The practitioner prescribed drugs at intervals that were inconsistent with legitimate medical treatment.
- Instead of professional medical terminology, the prescriber used or documented street slang for drugs and paraphernalia.
- The practitioner issued multiple prescriptions in a manner to spread them out and hide the activity.

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Examples of BNDD Cases in Missouri:

Reviewing cases where one of the charges has been unlawful prescribing, the bureau notes the most common violations found in Missouri:

- Practitioners did not have a professional license, state registration or DEA registration in place.
- The practitioner prescribed knowing that the drugs would not be used by the patient but would be transferred to another person or returned to the prescriber for the prescriber to abuse.
- A prescription was issued and there was no patient chart. All medications must be documented in a patient's chart and having a chart with a history, dates seen, diagnosis, and treatment plan is one of the criteria in determining if there is a legitimate practitioner/patient relationship. If a prescriber does not have a patient chart or any records, then they really aren't practicing medicine.
- Prescriptions for pharmaceuticals were issued in exchange for street drugs such as crack, heroin or meth.
- Prescriptions were issued in exchange for sexual or personal favors.
- Prescriptions were issued in the name of a fictitious person so the prescriber could go pick up the drugs.
- When the prescriber knows the patient is not taking the medication as directed and there are repeated re-authorizations for refills way too soon. The prescriber fails to address this with the patient.
- The prescriber issues prescriptions for a patient using multiple names so the patient can get multiple prescriptions at multiple pharmacies without detection.
- Prescribing outside the scope of practice, such as veterinarians prescribing for humans or a dentist treating back pain.

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